

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:03-CR-36-BR  
No. 7:17-CV-79-BR

NICHOLAS ANTWAN LEGGETT,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

## ORDER

This matter is before the court on petitioner's motion pursuant to 28 U.S.C. § 2255. (DE # 37.) The government has filed a response to the motion. (DE # 38.)

By way of background, on 28 October 2003, petitioner pled guilty to one count of being a felon in possession of ammunition, and on 8 March 2004, the court sentenced petitioner to 120 months imprisonment and three years supervised release. Petitioner did not appeal. Petitioner's term of supervised release began 25 February 2014.<sup>1</sup>

On 19 April 2017, petitioner filed the instant motion. His sole claim is that he is actually innocent of being a felon in possession of ammunition in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Mot., DE # 37, at 5.) He requests that his sentence be vacated, the indictment be dismissed, and his immediate release be ordered. (Id. at 13.) The government

concedes that Petitioner's challenge to his felon in possession offense is cognizable on collateral review. Further, in conformity with its policy, [the government] hereby waives reliance on all

<sup>1</sup> On 2 February 2017, U.S. Probation filed a motion for revocation, and a warrant for petitioner's arrest issued that same day. On 13 April 2017, petitioner was arrested. The revocation hearing is set for 1 May 2017. Although petitioner's term of supervised release has expired, the court retains jurisdiction for a reasonably necessary period. See 18 U.S.C. § 3583(i).

procedural defenses, including the statute-of-limitations defense (28 U.S.C. § 2255(f)) and other affirmative defenses that might preclude relief. Upon review of Petitioner's motion and relevant documentation, [the government] agrees that Petitioner has stated a meritorious claim of actual innocence as to his felon in possession charge . . . . [The government] agrees that Petitioner's conviction for felon in possession of a firearm [sic] should be vacated . . . .

(Resp., DE # 38, at 2-3.)

Accordingly, the § 2255 motion is GRANTED. The judgment entered 16 March 2004 is hereby VACATED, and the revocation hearing is TERMINATED.

This 20 April 2017.



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W. Earl Britt  
Senior U.S. District Judge